

CAUSE NO. _____

ELIDA RODRIGUEZ
Plaintiff

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

V.

OF HARRIS COUNTY, TEXAS

ADAM J. FLOOD,
JEFFREY M. STERN and
STERN LAW GROUP
Defendants

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Elida Rodriguez, complaining of Defendants, Adam J. Flood, Jeffrey M. Stern and the Stern Law Group, and would respectfully show as follows:

I
DISCOVERY CONTROL PLAN

1. Based upon this Petition, this case should be controlled by a discovery control plan Level 2 pursuant to the Texas Rules of Civil Procedure, Rule 190.3. This is not an expedited action as Plaintiff has suffered and sustained pecuniary losses exceeding \$200,000 but not more than \$1,000,000.

II
PARTIES

1. Plaintiff, Elida Rodriguez is an individual residing in Hidalgo County, Texas. The last four digits of her social security number are 4844. The last four digits of her Texas driver's license are 4786.

2. Defendant, Adam J. Flood is lawyer residing and practicing law in Harris County, Texas and may be served at 2500 West Loop South, Suite 450, Houston, Texas 77027, or wherever he may be found.

3. Defendant, Jeffrey M. Stern is lawyer residing and practicing law in Harris County, Texas and may be served at 2500 West Loop South, Suite 450, Houston, Texas 77027, or wherever he may be found.

4. Defendant, Stern Law Group is a law practice formed for the practice of law in Texas and believed to be operating as a general partnership. Stern Law Group may be served by serving its principal, Jeffrey M. Stern at 2500 West Loop South, Suite 450, Houston, Texas 77027 or wherever he may be found.

III JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over the controversy because the claims asserted in this Petition arose, in whole or in part, in Texas and the amount in controversy exceeds the minimum jurisdictional limits of this Court.

2. This Court has personal jurisdiction over each Defendant because the acts and/or omissions complained of herein occurred in Texas, each Defendant does and/or did do business in the State of Texas, has committed a tort, in whole or in part in Texas, is a resident and citizen of Texas, and/or has minimum contacts with the State of Texas during the period of time complained of herein.

3. Venue is properly laid in Harris County, Texas because at least one of the Defendants resides in, and/or has a principle office and headquarters in Harris County, Texas. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(2),(3).

IV FACTUAL BACKGROUND

1. This legal malpractice case arises out of an underlying personal injury claim. In short, the Defendants, who represent themselves as lawyers experienced in handling personal injury claims, failed to follow one of the simplest procedures in litigation: timely filing a response

to a motion for summary judgment. The Plaintiff's underlying personal injury claim had merit and the Plaintiff had suffered substantial harm and damages. Yet, due to the Defendants' inaction, the underlying court dismissed the Plaintiff's case. As a result, the Plaintiff's personal injury claim was forever lost. To make matters worse, Defendants concealed their failures from their own client and underhandedly tried to force her into settling any potential future legal malpractice claims against them. This is a case of neglect turned deception, the facts of which are as follows.

2. On October 17, 2017, Elida Rodriguez ("Mrs. Rodriguez") visited Sam's Club ("Sam's") on Jackson Road in McAllen, Texas with Pam Tamez ("Tamez") for the purpose of buying supplies for Tamez's adult day care center. Mrs. Rodriguez and Tamez had visited Sam's once a week for approximately seventeen years on similar shopping trips. On the day of the incident, Mrs. Rodriguez and Tamez filled two shopping carts and then proceeded to the loading zone in the front of Sam's. While loading the vehicle, Mrs. Rodriguez's foot was caught in a pothole, which caused her to fall on her right knee. As a result, Mrs. Rodriguez suffered severe injuries, including surgery on her right knee. In addition, Mrs. Rodriguez was informed she would eventually require a complete knee replacement due to the fall.

3. Jeffrey M. Stern ("Stern") is the principle at the Stern Law Group, which is believed to be a general partnership formed for the purpose of practicing law. Stern promotes that he has handled "almost every [personal injury] case imaginable" and has represented over 40,000 clients.¹ The Stern Law Group promotes their "highly qualified and regarded attorneys" and "aggressive advocacy and top-notch legal representation" for those that have been injured.² Stern asserts that he has "put together a team of warriors at the Stern Law Group" and that "no matter what the cause

¹ <https://www.stern-lawgroup.com/attorney-profiles/jeffrey-m-stern/#~07B2L81>

² <https://www.stern-lawgroup.com/about-us/#~07B2L81>

or how big the opponent, the Stern Law Group has the capital and resources to take on any wrongdoer.”³ Adam J. Flood (“Flood”) is employed by the Stern Law Group and is part of Stern’s self-proclaimed “team of warriors” that provide “top-notch legal representation.”⁴

4. Believing Stern and the Stern Law Group to be knowledgeable and experienced based off the representations on their website and elsewhere, Mrs. Rodriguez hired Stern and the Stern Law Group to represent her in her personal injury case against Sam’s. In exchange, Mrs. Rodriguez agreed to provide the Stern Law Group a contingency fee from any gross recovery.

5. After being retained, Stern, Flood and the Stern Law Group (“Defendants”) filed suit on Mrs. Rodriguez’s behalf in the 430th Judicial District Court of Hidalgo County against Sam’s. According to the Defendants’ filings in the case, Flood was listed as lead counsel in Mrs. Rodriguez’s lawsuit against Sam’s. Sam’s subsequently removed the case to federal court based on diversity of citizenship. In federal court, Sam’s timely filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. Despite their claims of “aggressive advocacy,” Defendants failed to file a response to the motion. As a result, the court held that Mrs. Rodriguez “failed to respond” and thus indicated “she [Mrs. Rodriguez] is unopposed to Defendant’s motion.”⁵ The court therefore had no choice but to grant Sam’s motion for summary judgment and dismiss Mrs. Rodriguez’s premises liability claim with prejudice.⁶

6. In an attempt to rectify their negligence, Defendants filed a motion to reconsider on June 13, 2018. In the motion to reconsider, Defendants raised arguments and provided evidence that should have been raised in response to Sam’s motion for summary judgment, thereby

³ <https://www.stern-lawgroup.com/attorney-profiles/jeffrey-m-stern/#~07B2L81>

⁴ <https://www.stern-lawgroup.com/attorney-profiles/adam-j-flood/#~J8y3L81>

⁵ See Exhibit 1, Court’s January 7, 2019 Order Granting Summary Judgment.

⁶ See Exhibit 1.

demonstrating that summary judgment could have been overcome had a response been timely filed. Nonetheless, the court denied the motion to reconsider because Defendants had not provided any valid excuse for their failure to previously produce the evidence.⁷ The court declared that Defendants, at the very least, “could have sought an extension of time to respond” but failed to do so.⁸ The court decided that the Defendants’ “unexcused failure” to respond was not grounds for relief.⁹ The court therefore denied Mrs. Rodriguez’s motion to reconsider on March 21, 2019.¹⁰ Thus, Plaintiff’s personal injury claim was forever lost.

7. Defendants should have (and could have) timely filed a response to the motion for summary judgment in the underlying case. At the very least, Defendants should have (and could have) filed a motion for continuance to respond to the motion for summary judgment with the court. Had they done so, Mrs. Rodriguez’s underlying case would have been successful, and Mrs. Rodriguez would have obtained a collectable judgment or settlement from the underlying defendant, Sam’s. Instead, Defendants’ failure to respond caused the court to dismiss Mrs. Rodriguez’s underlying personal injury claim with prejudice.

8. Defendants negligence soon turned to deception. Defendants never informed Mrs. Rodriguez that her case was dismissed due to their errors. Instead, Defendants purposefully concealed their negligence and the fact that the case had been dismissed. Only after Mrs. Rodriguez visited the Defendants’ office in May of 2019 did an assistant inform her that her case had been dismissed. Even then, Defendants provided Mrs. Rodriguez with no explanation concerning the dismissal of her case.

⁷ See Exhibit 2, Court’s March 21, 2019 Order Denying Motion to Reconsider.

⁸ See Exhibit 2.

⁹ See Exhibit 2.

¹⁰ See Exhibit 2.

9. At that point, Mrs. Rodriguez asked the Defendants for her file and informed Defendants she intended to see another lawyer. After months of providing Mrs. Rodriguez with little to no information regarding her case, Defendants began to call Mrs. Rodriguez numerous times and beg her to visit the office and discuss her case with Stern.

10. After Defendants' numerous calls, Mrs. Rodriguez finally ceded and visited with Stern. In that meeting, Stern, who claims to assist people who have been "taken advantage of,"¹¹ attempted to take advantage of his uninformed client, offering her \$5,000 to settle any potential claim without the nature or implications of the settlement or to seek out another lawyer. Mrs. Rodriguez did not accept the Defendants' offer. To this day, Defendants are still acting in their own self-interest and have refused to produced Mrs. Rodriguez's underlying case file despite multiple requests, thereby converting Mrs. Rodriguez's property.

STATEMENT OF CLAIMS

1. Therefore, it has become necessary to bring this suit to collect a legal debt of money damages owing to Plaintiff due to the Defendants' actions. The Defendants' actions constitute negligence, gross negligence, breach of fiduciary duty, violate the Texas Deceptive Trade Practices Act and constitute conversion.

A. NEGLIGENCE

2. Plaintiff incorporates those facts set forth above as if recited herein verbatim. In addition to the allegations outlined above, the following errors and/or omissions by Defendants in the underlying representation constitute negligence:

- Failure to protect Plaintiff's interest;

¹¹ <https://www.stern-lawgroup.com/attorney-profiles/jeffrey-m-stern/#~6670Z81>

- Failure to diligently represent Plaintiff;
- Failure to timely file a response to the underlying defendant's motion for summary judgment; and,
- Failure to communicate with Plaintiff.

3. Of course, nothing Plaintiff did, or failed to do, caused or in any way contributed to cause the occurrences that resulted in losses and damages to Plaintiff. On the contrary, the Defendants fell below the standard of care for attorneys practicing law in Texas, and thus, Defendants' conduct was a proximate and/or producing cause of Plaintiff's losses and damages.

B. GROSS NEGLIGENCE

4. In addition to the allegations above, the following acts of malfeasance constitutes gross negligence. Defendants, who represent themselves as experts and "top-notch" personal injury lawyers, were grossly negligent because their acts or omissions in failing to file a response to the underlying defendant's motion for summary judgment in federal court, when viewed objectively from the standpoint of the Defendants at the time they were representing Plaintiff, their conduct involved an extreme degree of risk that Plaintiff's case would be dismissed, considering the probability and magnitude of the potential harm to Plaintiff. Moreover, the Defendants, who advertise to be seasoned in handling personal injury claims and the plethora of authority available to these seasoned lawyers outlining the consequence of their failure to follow the rules of civil procedure, had actual, subjective awareness of the risk of Plaintiff's case being dismissed, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff. See TEX. CIV. PRAC. & REM. CODE § 41.001(A) and (B). In fact, Plaintiff's underlying case was dismissed due to Defendants' extreme neglect.

5. "The factor which 'lifts ordinary negligence into gross negligence is the mental attitude of the defendant. . . ." *Rhodes v. Batilla*, 848 S.W.2d 833, 844 (Tex. App.—Houston [14th

Dist.] 1993, writ denied). When a lawyer, through their omissions, acts in direct contravention to the purpose for which they were retained and with an extreme degree of risk to their client, they can be held grossly negligent. *See id.* Defendants' utter lack of care as to Plaintiff's underlying case and refusal to timely respond to the underlying defendant's motion for summary judgment and plethora of authority is the factor which lifts their conduct from ordinary negligence to gross negligence. *See id.* Thus, Defendants are liable to Plaintiff for exemplary damages.

C. BREACH OF FIDUCIARY DUTY

6. At all times material, Defendants owed Plaintiff various fiduciary duties as a matter of law, including, among others:

- Duty of loyalty and utmost good faith;
- Duty of candor;
- Duty to refrain from self-dealing;
- Duty to act with integrity of the strictest kind;
- Duty of fair, honest dealing;
- Duty of full disclosure all material facts;
- Duty to represent Plaintiff with undivided loyalty; and
- Duty to act with absolute perfect candor, openness, honesty, and without any concealment or deception.

7. Defendants intentionally breached one or more of the above fiduciary duties by concealing from Plaintiff that her case had been dismissed with prejudice due to their inaction and by attempting to underhandedly deceive Mrs. Rodriguez into settling any potential malpractice action against them. Defendants concealed the fact that Plaintiff's case had been dismissed due to their failures in an effort to avoid the present litigation. By doing so, Defendants placed their own interests ahead of Plaintiff. Defendants further breach their fiduciary duty to Plaintiff by attempting

to pay her off and settle any potential claim against them without a full disclosure of the material facts concerning her case or the nature and implications of her claims. Defendants continue to breach the duties owed to Plaintiff by refusing to provide Plaintiff's case file despite multiple requests. These breaches of fiduciary duty proximately caused Plaintiff damages in that, had Defendants not placed their interests ahead of Plaintiff's interests, Plaintiff would have never been forced to endure the emotional distress she has suffered.

D. TEXAS DECEPTIVE TRADE PRACTICES ACT

8. Pursuant to *Latham v. Castillo*, 972 S.W.2d 66, 68 (Tex. 1998), an express misrepresentation constitutes an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion, and thus, violates Texas Deceptive Trade Practices Act ("DTPA"). In this same regard, an attorney can be held liable to his client if he violates the DTPA by engaging in an unconscionable action or course of action.

9. Plaintiff is a consumer under the DTPA because Plaintiff acquired goods or services from Defendants. Defendants violated the DTPA because Defendants engaged in false, misleading, unconscionable or deceptive acts or practices that Plaintiff relied upon to her detriment. Specifically, Defendants made an express misrepresentation by assuring Plaintiff that her underlying case was on going when, in fact, the case had been dismissed. *See Latham*, 972 S.W.2d at 68. Defendants also engaged in unconscionable conduct by attempting to settle the claims against them without disclosing the nature and implications of the settlement or advising Plaintiff to obtain another lawyer. Plaintiff will show that the Defendants' conduct, as described herein, was committed knowingly and intentionally. Moreover, the conduct described herein constitutes an unconscionable action or course of action that cannot be characterized as advice, judgment or opinion. Accordingly, Defendants are liable to Plaintiff for additional damages as

provided by the DTPA, including treble damages and reasonable attorneys' fees necessary to bring this cause of action, all of which are being sought herein.

E. CONVERSION

10. Defendants are liable to Plaintiff for conversion. Defendants possess personal property that belongs to the Plaintiff. This property includes, but is not limited to, the Plaintiff's original client file and documents from the underlying litigation. Despite the Plaintiff's repeated requests that the Defendants return this property, the Defendants have refused and continue to refuse to comply with these requests, thereby depriving Plaintiff of her property. As a direct result of the Defendants' conduct, the Plaintiff has suffered damages in an amount to be proved at trial.

**VI
DISCOVERY & TOLLING RULE**

1. To the extent necessary, Plaintiff affirmatively pleads the discovery rule and/or the *Hughes* tolling rule to any defense of limitations asserted by Defendants regarding any of Plaintiff's causes of action.

**VII
DAMAGES**

1. Regarding the causes of action and conduct alleged above, Plaintiff has sustained pecuniary losses that were proximately caused by Defendants' conduct.

A. ACTUAL DAMAGES

2. Plaintiff seeks actual damages in an amount exceeding \$200,000 but not more than \$1,000,000. Specifically, Plaintiff was damaged in an amount equal to the value of what Plaintiff would have recovered in both the underlying case by way of settlement or, alternatively, trial.

B. ATTORNEYS' FEES

3. Defendants' violation of the DTPA entitles Plaintiff to reasonable attorney's fees necessary to prosecute this action. Texas law recognizes that contingency fees can be reasonable and necessary under the circumstances. Under these circumstances, a reasonable attorney's fee of 40-45% of the entire recovery should be assessed against the Defendants.

C. EXEMPLARY DAMAGES

4. Due to Defendants' gross negligence and breach of fiduciary duty, Plaintiff is entitled to exemplary damages which she seeks herein. Plaintiff seeks exemplary damages to the maximum extent of the law.

D. TREBLE DAMAGES

5. Due to Defendants' intentional and/or knowing violations under DTPA, Plaintiff is entitled to treble damages for which Plaintiff seeks herein.

E. MENTAL ANGUISH DAMAGES

6. Plaintiff is entitled to mental anguish damages pursuant to the DTPA and because of Defendants' intentional breach of fiduciary duty and gross negligence, and hereby seeks mental anguish damages to the maximum extent of the law.

**VIII
JOINT LIABILITY**

1. At all times material hereto, Defendants represented Plaintiff in the legal matters described herein. At all times material hereto, all of the specific acts complained of herein are attributable to the conduct of the individual attorneys associated with their respective law firms as partners, agents, servants, representatives and/or employees. Thus, the liability and responsibility of Defendants is vicarious, and joint and several, and, further, Plaintiff pleads the legal theory of *respondeat superior* as between the individual lawyers named herein and their law firms.

**IX
JURY DEMAND**

1. Plaintiff desires to have a jury decide this case and makes this formal request pursuant to Texas Rule of Civil Procedure 216. This request is filed more than thirty days before this case has been scheduled for trial and all fees have been paid.

**X
REQUEST FOR DISCLOSURE**

1. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

**XI
NOTICE OF INTENT TO USE PRODUCED DOCUMENTS**

1. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, each party is hereby given notice of Plaintiff's intent to use any and all documents produced by any and all parties at any pretrial hearing, deposition, proceeding, the trial of this matter, or any combination thereof.

**XII
PRAYER**

1. THEREFORE, Plaintiff prays that after trial herein, that judgment be entered against Defendants jointly and severally as prayed for, that costs of court be taxed against Defendants, that Plaintiff be given prejudgment as well as post judgment interest, and for such other and further relief, at law and in equity to which Plaintiff may show herself to be justly entitled, to which the Court believes Plaintiff to be deserving, and for which Plaintiff will ever pray.

Respectfully submitted,

THE KASSAB LAW FIRM



LANCE CHRISTOPHER KASSAB

Texas State Bar No. 00794070

lance@kassab.law

DAVID ERIC KASSAB

Texas State Bar No. 24071351

david@kassab.law

NICHOLAS R. PIERCE

Texas State Bar No. 24098263

nicholas@kassab.law

1214 Elgin Street

Houston, Texas 77004

Telephone: 713-522-7400

Facsimile: 713-522-7410

ATTORNEYS FOR PLAINTIFF

Unofficial Copy Office of Marilyn Burges-Petric Clerk